IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2857 OF 2006

Gopal Ramchandra Waje ..Applicant
V/s
Tukaram Ramchandra Waje & Ors. ..Respondent.

Mr.S.G.Deshmukh, Advocate for the applicant.
Mrs.M.H. Mhatre, APP for the State.

CORAM : J.H. BHATIA, J.
DATE : 17TH APRIL, 2007.

P.C.

. Heard Mr. Deshmukh, learned Counsel for the applicant. Perused the copy of the impugned Judgment and the evidence led by the applicant/complainant before the trial Court.

2. This is an application seeking leave to prefer an appeal against the acquittal of respondent Nos 1 to 4 for the offence punishable under Section 448, 323, 379, and 427 r/w/ section 34 of Indian Penal Code. The case was based on complaint lodged by the present applicant. According to him, he is the owner and in occupation of the disputed hotel. In civil litigation the accused had failed to establish their possession or title over the same. On 10/1/2003 at about 12.30 P.M. the respondent Nos 1 to 4 committed tress-pass by entering into the

said hotel. They beat him and caused injuries. Accused No.4 also took away the amount of Rs.10,000/- from the possession of the complainant and he also caused wrongful loss or damage to the property of the complainant valued at Rs.180/- The charge was framed against all the four accused for the offence. On behalf of the complainant in all seven witnesses were examined. After hearing the parties the learned J.M.F.C., Shrivardhan acquitted all the four accused persons.

3. Respondent No.2 is wife of respondent No.1 and respondent No.3 and 4 are their sons. The learned trial Court noted that as per the complaint and evidence of the complainant, all the four persons had entered into the hotel and accused Nos. 1 and 4 had actually beaten him. The accused No.4 had assaulted him with the knife causing bleeding injury on his palm. He had taken away amount of Rs.10,000/- and caused damages in the hotel. P.W. 3 Laxmibai, who claims to be an eye witness, was present on the spot when accused No.1 and 2 entered into hotel. According to her accused No.1 also beat complainant and when she tried to separate them, accused No.2 Kunda Waje asked her not to intervene. P.W. 3 Laxmibai does speak about presence of accused Nos. 3

and 4 on the spot. P.W. 4 Jaina runs a hotel near the spot of incident. According her, three or four persons had come there and beaten the complainant. According to her, accused No.1 and 3 were present amongst those persons. She does not speak about the presence of accused Nos. 2 and 4. Evidence of these two persons is important. They do not show the presence of accused No.4, who had allegedly assaulted the complainant with knife and caused injury on his palm. It is material to note that P.W. 2 Dr. Mahindra Bharne, who had examined the complainant, had found only an abrasion on the left palm of the complainant but this injury could be caused by hard and blunt object. He specifically ruled out the possibility of injury being caused by sharp and cutting weapon. Thus, the evidence of these three important witnesses does not support the prsosecution case. Taking into consideration all the circumstances and the fact that the complainant had not approached the police, the learned Magistrate acquitted the accused persons.

4. Taking into consideration the nature of evidence and the circumstances, I find no fault in the impugned order of acquittal passed by the trial Court. Therefore, leave to prefer the appeal is refused. The application

stands rejected.

(J.H. BHATIA, J.)